



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

March 8, 2006

Mr. Donald Hansen, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place
Portland, OR 97220

Dear Mr. Hansen:

This is to advise the Council that the National Marine Fisheries Service (NMFS) is partially approving Amendment 19 to the Pacific Coast Groundfish Fishery Management Plan (FMP), a comprehensive strategy to conserve and enhance Essential Fish Habitat (EFH) for Pacific coast groundfish. The partial approval of this comprehensive strategy to conserve EFH, including its identification and the implementation of measures to minimize to the extent practicable adverse impacts to EFH from fishing is consistent with provisions of the MSA (16 U.S.C. 1801 *et. seq.*) and its implementing regulations. Amendment 19 includes four categories of action: identification and description of EFH; designation of Habitat Areas of Particular Concern (HAPC); measures to minimize to the extent practicable adverse impacts of fishing on EFH; and, research and monitoring. Preparation of this amendment stems from a 2000 court order in *American Oceans Campaign et. al. v. Daley*, Civil Action No. 99-982 (GK)(D.D.C. September 14, 2000) (*AOC v. Daley*). A proposed rule to implement Amendment 19 was published on January 12, 2006 (71 FR 1998) with final rulemaking expected shortly.

There are two aspects of Amendment 19 that NMFS is disapproving: 1) the designation of oil production platforms as "Habitat Areas of Special Concern" (HAPC); and 2) the application of management measures (i.e., bottom trawl restriction) in areas outside of designated EFH. The details of these disapprovals follow.

HAPC Designation

NMFS is approving the Council process for considering HAPC and HAPC designation of estuaries, canopy kelp, seagrass, rocky reefs, and the following specified areas of interest: Thompson Seamount, Daisy Bank, President Jackson Seamount, Cordell Bank, Gumdrops Seamount, Pioneer Seamount, Guide Seamount, Monterey Canyon, Taney Seamount, Davidson Seamount, San Juan Seamount, selected areas in the Channel Islands National Marine Sanctuary, Cowcod Conservation Area East, Potato Bank, Cherry Bank, Hidden Reef/Kidney Bank, and all waters and sea bottom in Washington State waters (0-3 nm from shore). NMFS is not approving the designation of oil production platforms as HAPC.



NMFS has reviewed the available science related to oil production platforms and weighed public comment and determined there is insufficient evidence that a strong enough link exists to the HAPC considerations articulated in the EFH regulatory guidelines at 50 CFR 600.815(a)(8) for the creation of these specific HAPCs. The record shows different and possibly contradictory information about the effect of oil platforms on groundfish. While the areas around the rigs are important enough for the groundfish fishery to be identified and described as EFH, the Council did not provide sufficient information to support the designation of these structures as HAPC at this time. However, NMFS will continue to consult with Federal agencies on actions that may adversely affect EFH within the vicinity of the oil platforms. In addition, NMFS will continue to gather information regarding the relative importance of these structures to the groundfish fishery and may work with the Council to take action to designate such structures as EFH or HAPCs in the future, if deemed appropriate.

Impacts Minimization Measures

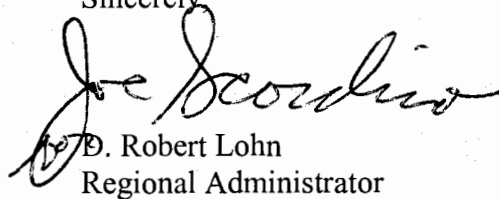
NMFS is partially approving the impacts minimization measures (e.g., bottom trawl and dredge restrictions) in Amendment 19 to the FMP. All of the impacts minimization measures in Amendment 19 are approved within the area designated as EFH. The seaward extent of specific management measures will be (with the exception of specified HAPC) the 3500 m depth contour consistent with the description of EFH. Management measures for areas outside of EFH are disapproved.

Amendment 19 includes a coastwide prohibition of bottom trawling seaward of 700 fm (1280m); however, I am disapproving the application of management measures in areas of the EEZ that are not described as EFH because application of the measures outside EFH is not consistent with the Magnuson-Stevens Act. Among the stated purposes of the Magnuson-Stevens Act are to take immediate action to conserve and manage the fishery resources off the coasts of the United States; to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing; to promote the protection of essential fish habitat; and to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which achieve and maintain, on a continuing basis, the optimum yield from each fishery. *See* 16 U.S.C. § 1801(b). Any management measures implemented must be "necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery," as well as consistent with the national standards, and other provisions of the Act. 16 U.S.C. § 1853(a)(1). There are a variety of reasons areas may be closed to certain fishing activities under the Magnuson-Stevens Act, including: to ensure that OY is achieved; to minimize bycatch; and to minimize to the extent practicable adverse effects of fishing on EFH. NMFS has the authority to close an area for any combination of these or other reasons based on conservation and management of the fishery. The legal basis for any particular closure is based on the authority in the Magnuson-Stevens Act, as applied to the record in the case. In addition, the Council has the authority and discretion to recommend, and NMFS may approve, other measures, including closures, that are necessary and appropriate for the conservation and management of the fishery. *See* 16 U.S.C. § 1853(b)(12).

Recognizing current limits to protect such areas, the Administration offered an ecosystem approach to management in its proposal to reauthorize the Magnuson-Stevens Act. Among the ecosystem related provisions, section 4(f) of the proposal would allow the regional councils to develop fishery ecosystem plans that "may contain conservation and management measures applicable to fishery resources throughout the fishery ecosystem, including measures that the Council or the Secretary deems appropriate to ... (B) establish marine managed areas in the Exclusive Economic Zone" Inclusion of such a provision in the reauthorized Magnuson-Stevens Act would authorize the type of action recommended by the Council in Amendment 19. In addition, S. 2012, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2005, includes a provision that would allow the Councils to "designate such zones ... to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas" (section 105).

Amendment 19, as approved, establishes a comprehensive approach to protecting EFH. I commend and appreciate the Council's hard work and significant actions to address essential fish habitat for groundfish. I look forward to our continued coordination on this important issue.

Sincerely,



D. Robert Lohn
Regional Administrator